IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5250 OF 2003

Mr.Rahul Walvekar i/b R.V.More for the Petitioners.

Mr.T.S.Ingale for Respondent No.1.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders

CORAM: D.K.DESHMUKH, J.

DATED: 14th September,2005

P.C.:

By this petition the Petitioner challenges the order, by which the trial court has appointed Commissioner for local investigation. An order appointing the Commissioner is an order of interlocutory nature capable of being challenged with the final order that may be passed in the suit.

2. The learned Counsel for the Petitioner, however, relying on the judgment of the Supreme Court in the

case of Surya Dev Rai v/s. Ram Chander Rai and ors., 2003(6) SCC, 675 submits that this court can entertain the petition under Article 227 of the Constitution of India. In my opinion, the judgment of the Supreme Court is exactly to the contrary. Observations of the Supreme Court in paragraph 26 are relevant. They read as under:-

> 26. In order to safeguard against a mere appellate or revisional jurisdiction being exercised in the garb of exercise of supervisory jurisdiction under Article 227 of the Constitution, the courts have devised self-imposed rules of discipline on their power. Supervisory jurisdiction may be refused to be exercised when an alternative efficacious remedy by way of appeal or revision is available to the person aggrieved. The High Court may have regard to legislative policy formulated on experience and expressed by enactments where the legislature in exercise of its wisdom has deliberately chosen certain orders and proceedings to be kept away from exercise of appellate and revisional jurisdiction in the hope of accelerating the conclusion of the proceedings and avoiding delay and procrastination which is occasioned by subjecting every order at every stage of proceedings to judicial review by way of appeal or revision. So long as an error is capable of being corrected by a superior court in exercise of appellate or revisional jurisdiction, though available to be exercised only at the conclusion of the proceedings, it would be sound exercise of discretion on the part of the High Court to refuse to exercise the power of superintendence during the

pendency of the proceedings. However, there may be cases where but for invoking the supervisory jurisdiction, the jurisdictional error committed by the inferior court or tribunal would be incapable of being remedied once the proceedings have concluded.

3. As the order appointing the commissioner is capable of being challenged before the Appellate Court, in view of the law laid down by the Supreme Court, present petition cannot be entertained by the court. Petition is rejected.

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